

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4255 OF 2017
(Dhanabai Jalamsingh Pardeshi and others Vs. Sominath
Sonba Waghule and others)

Mr.G.K.Naik Thigle, Advocate for the petitioners.
Mr.R.R.Karpe, Advocate for respondent Nos.1, 2, 9 and 12.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/09/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 13/02/2017 by which application Exh.101, seeking corrections in the typographical errors and in the boundaries, has been rejected.
2. I have considered the submissions of the learned Advocates.
3. Mr.Karpe, learned Advocate for respondent Nos. 1, 2 to 9 and 12 strenuously opposes this petition and supports the impugned order. He submits that this case does not merely involve correction of typographical errors, but factually seeks correction in the averments made against individual defendants. So also, the pleadings with regard to the boundaries are also being sought to be amended. Recording of evidence is almost complete. By permitting

such amendment, the petitioners would derive an undue advantage.

He also relies on the proviso to Rule 17 below Order 6 of the CPC and prays for the dismissal of this petition with costs.

4. Respondent Nos.3 to 8, 10 and 11 have not caused an appearance in this matter, despite service of court notice.

5. I find from the record that some of the defendants were before this Court in WP No.4114/2015 praying for quashing the "no written statement" and "no cross order" in the said suit. By order dated 27/09/2016, the said impugned orders were set aside and the defendants were permitted to enter their written statement and cross examine the plaintiffs. Thereafter, the petitioners have preferred Exh.101 on 23/01/2017 after noticing certain errors in the typing of the plaint.

6. I find from Exh.101 that the surname of some of the defendants which is "Borade", has been typed as "Borate". At several places, the numbers of the defendants are said to have been wrongly typed. For example, defendant Nos. 9 and 10 is typed as defendant Nos. 8 and 9 and similar errors are said to have occurred in paragraph Nos.13 to 18 of the plaint.

7. One another prayer in the amendment application is that the boundaries have been wrongly mentioned and the same needs to be corrected.

8. There is no dispute that the recording of evidence is over. The typographical mistakes have gone un-attended and un-rectified due to the laxity of the plaintiffs. Nevertheless, in a suit being adjudicated upon, typographical errors would be in nobody's interest. It would not be too late to cure the said defects.

9. As such, Exhibit 101 is allowed to the extent of writing the correct surname as mentioned in paragraph No.3 and correcting the number of defendants in the original paragraph Nos. 13 to 18 of the plaint. Similarly, the name "Avinath" appearing in line no.15 of paragraph No.2 of the plaint can be replaced by the name "Avinash".

10. In so far as correction in the description of boundaries is concerned, as a map with regard to survey Nos.32 and 33 is already placed on record and the petitioners do not state that the map contains erroneous boundaries, the Trial Court shall consider the boundaries emerging from the said map and no correction in the plaint for the said purpose would be allowed.

11. This petition is, therefore, partly allowed in the light of the directions set out in the above paragraph Nos.9 and 10 and the impugned order dated 13/02/2017 stands quashed and set aside to that extent. The petitioner shall pay a total amount of Rs.15,000/- to respondent Nos. 1, 2, 9 and 12 appearing in this petition by depositing the said amount in the Trial Court within a period of 3 (three) weeks from today, failing which the impugned order dated 13/02/2017 shall stand restored. After depositing the amount, these 4 respondents would withdraw the said amount in equal proportions ($1/4^{\text{th}}$ each). Needless to state, in the event the litigating sides desire to adduce further evidence pursuant to this order, the Trial Court may permit them to do so.

(Ravindra V.Ghuge, J.)